APPELLATE CIVIL.

Before Mr. Justice O'Kinealy and Mr. Justice Trevelyan.

UMASOONDURY DASSY (JUDGMENT-DEBTOR) *v.* BROJONATH BHUTTACHARJEE, MANAGER OF THE ESTATE OF BARODA PROSAD CHOWDHRY (DECREE-HOLDER).* 1889 *February* 14.

Execution of Decree—Transfer by operation of law—Civil Procedure Code (Act XIV of 1882), *s.* 232—*Right of Procedure—Execution under Bengal Act VIII of* 1869 *and Act VIII of* 1885.

Upon the death of the full owner, the mother took out probate of a will in which she was appointed executrix. The will was afterwards disputed by the minor son of the testator, and probate was revoked: but, while the mother was in possession of the estate as executrix, she sued and obtained a decree for rent under Bengal Act VIII of 1869.

Upon the application of the minor for the execution of the decree: *Held*, that the minor was in a position to execute the decree, his succession to the estate of his father being a succession or *transfer by operation of law* within the meaning of s. 232 of the Code of Civil Procedure.

Held, also, that the mode in which the decree was executed under the old Rent Act, Bengal Act VIII of 1869, was, in so far as it was a right at all that belonged to the judgment-creditor, not a private right, but a mere right of procedure, and the execution was therefore to be governed by Act VIII of 1885.

ON the death of one Horo Prosad Roy Chowdhry, his mother, Radhicaranee Chowdhranee, set up a will appointing her executrix of the properties left by him, and obtained probate thereof from the Court of the District Judge of the 24-Pergunnahs. Subsequently the will was disputed on behalf of Baroda Prosad Chowdhry, the minor son of Horo Prosad, and, on the 22nd December 1886, the High Court revoked probate thereof.

On the 8th November 1887, Brojonath Bhuttacharjee was appointed Manager of the Estate of the minor Baroda Prosad by the Court of Wards.

While she was in possession of the estate as executrix, Radhicaranee Chowdhranee obtained a decree for rent under

* Appeal from Order No. 462 of 1888, against the order of Baboo Radha Krishna Sein, Subordinate Judge of the 24-Pergunnahs, dated the 19th of September 1888.

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Bengal Act VIII of 1869 against Umasoondury Dassy and others. This decree seems to have been confirmed by the High Court on the 22nd July 1885. On the 17th September 1887, Brojonath Bhuttacharjee applied to the Second Subordinate Judge of the 24-Pergunnahs for the execution of this decree. Two objections were raised to the application on behalf of the judgment-debtors. It was objected, in the *first* place, that the decree did not vest in the minor Baroda Prosad; and, *secondly*, that as the decree was made when Bengal Act VIII of 1869 was in force, execution must be governed by that Act and not by the new Rent Act of 1885. The Subordinate Judge held that under s. 232 of the Civil Procedure Code, the decree had vested in the minor, and that Brojonath Bhuttacharjee, as Manager, could execute it. He also held that execution of the decree was governed by the new Rent Act of 1885. Accordingly the Subordinate Judge made an order for execution.

From this order the judgment-debtor, Umasoondury Dassy, appealed to the High Court.

Baboo *Nil Madhub Bose* and Baboo *Mohini Mohun Chuckerbutty* for the appellant.

Baboo *Dwarka Nath Chuckerbutty* for the respondent.

The judgment of the Court (O'KINEALY and TREVELYAN, JJ.) was as follows:—

In this appeal two points have been raised and discussed at some length. It appears that, after the death of the full owner of the property, the mother took out probate of a will in which she was appointed executrix; that, no doubt, vested the property in her. Afterwards probate was revoked; and that, no doubt, took the estate out of her, and then the estate went to the minor heir. While she had the estate she sued and obtained a decree; and the minor now seeks to have that decree executed.

Against the execution two objections have been raised. *First*, that the minor can have no interest under the decree. The answer to that, we think, is that the lower Court was correct in holding that he had an interest. Section 232 of the Code of Civil Procedure says: "If a decree be transferred by assignment

in writing or by operation of law from the decree-holder to any other person, the transferee may apply for its execution to the Court which passed it." We think that when the minor succeeds to the estate—which, up to the date it fell into his hands, had been in possession of the executrix—that there was a succession or transfer by operation of law within that section. We therefore think that the minor is in a position to execute the decree.

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The next point is that the execution must be governed by Bengal Act VIII of 1869, and not by the present Rent Act, and that raises the question whether the mode, in which the decree was executed under the old Rent Act, was, in so far as it was a right at all that belonged to the judgment-creditor, a private right or a mere right of procedure. It is not contested that if it be a right of procedure and nothing more, the new Act applies. The old law is to be found in ss. 59, 60 and 61 of Bengal Act VIII of 1869. Section 59 lays down the procedure to be followed on sale of an under-tenure, and s. 61 closes that portion of it by stating when and when not the order of sale shall issue.

We think the right contended for by the appellant in this case, even if it existed, which we do not decide, was a mere right of procedure, and that the Judge in the Court below was right in holding that the present execution proceedings must be governed by the procedure now in force.

The result is that the appeal will be dismissed with costs.

C. D. P. *Appeal dismissed.*

CRIMINAL REFERENCE.

Before Mr. Justice Mitter and Mr. Justice Macpherson.

THE EMPRESS *v.* BAIKANTA BAURI.[o]

1889. *March* 4

False Evidence—Alternative Charges—Statement made to Police Officer investigating case—Penal Code (Act XLV of 1860), ss., 191, 193—Criminal Procedure Code (Act X of 1882) s. 161.

An accused was charged with giving false evidence upon an alternative charge, one statement having been made to a police officer investigating a case of arson, and the other having been made when he was examined as a

[o] Criminal Reference No. 2 of 1889, made by R. F. Rampini, Esq., Sessions Judge of Burdwan, dated the 26th of January 1889.